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2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON AT TACOMA

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4 STATE OF WASHINGTON, )

5 Plaintiff, )

6 v. )

7 FRANCISCAN HEALTH SYSTEM )  
8 d/b/a CHI FRANCISCAN HEALTH; )  
9 FRANCISCAN MEDICAL GROUP, )  
10 THE DOCTORS CLINIC, a )  
11 professional corporation; )  
12 and WESTSOUND ORTHOPAEDICS, )  
13 P.S., )

14 Defendants. )

3:17-cv-05690-BHS

Tacoma, Washington

June 19, 2019

Motion Hearing

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15 VERBATIM REPORT OF PROCEEDINGS  
16 BEFORE THE HONORABLE BENJAMIN H. SETTLE  
17 UNITED STATES DISTRICT JUDGE

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18 For the Plaintiff: JONATHAN MARK  
19 ERICA KOSCHER  
20 AMY HANSON  
21 Assistant Attorneys General

22 For the Defendant JESSICA ANDRADE  
23 Franciscan Health: Attorney at Law

24 For the Defendant  
25 The Doctors Clinic: DAVID MAAS  
Attorney at Law

Proceedings stenographically reported and transcribed with  
computer-aided technology

MORNING SESSION

JUNE 19, 2019

THE CLERK: This is the matter of State of Washington versus Franciscan Health System, Cause Number 17-05690-BHS.

Counsel, please make an appearance.

MS. KOSCHER: Erica Koscher for the Attorney General's Office for the State of Washington.

MR. MARK: Jonathan Mark for the State of Washington.

MS. HANSON: Amy Hanson for the State of Washington.

MS. ANDRADE: Jessica Andrade for Franciscan and WestSound Orthopaedics; with me is senior counsel for Franciscan.

MR. MAAS: David Maas for The Doctors Clinic.

THE COURT: Good morning. First, the Court certainly wants to commend the parties for resolving this case short of trial. The issues, as we all recognized, were complex, and the trial, regardless of the outcome, would have produced far-reaching implications for the delivery of healthcare in Kitsap County. This may be said to be true, of course, with the consent order, but the difference is that the resolution was ultimately one that both sides could agree upon, which is almost always better than the Court having to impose its decision on the parties.

This means the consent order, both as to substance and process, can be implemented in a way that produces the least

1 amount of uncertainty, contentiousness and confusion.

2 The Court set this hearing to further this goal by asking  
3 you some questions concerning primarily process, and consider  
4 whether in some cases providing definitions or more detail  
5 could avoid future disagreement.

6 I would like to go through this with you. When inquiring,  
7 I will start with plaintiff and ask the defendant to respond.

8 The divestiture agreement first mentioned at page 6,  
9 paragraph 28 -- I'm sorry, paragraph 18 -- of course, it  
10 comes into the agreement later on at page 28 -- there is not  
11 any detail as to the criteria that will be used to determine  
12 whether the divestiture agreement fulfills the requirements  
13 of the agreement.

14 Is there any thought that additional detail there would be  
15 helpful, plaintiff?

16 MS. KOSCHER: Your Honor, I believe how the parties  
17 had envisioned the agreement upon divestiture would be that  
18 both parties need to approve who would be -- who would be the  
19 purchaser of the ambulatory surgery facilities, and that it  
20 would be essentially a reasonableness standard and we  
21 wouldn't unreasonably withhold approval of a buyer identified  
22 by the defendants.

23 THE COURT: Again, that is kind of broad. Maybe that  
24 is all the parties wish to use, seems to me, without greater  
25 definition than what is going to be the Court's resolution if

1 there is a dispute as to whether a particular divestiture  
2 agreement is going to be proposed.

3 MS. KOSCHER: I don't think the State has any  
4 specific concerns of criteria that we felt needed to be in  
5 the consent decree in terms of specific concerns of the  
6 scenario where the State wouldn't necessarily agree to a  
7 proposed buyer. I will defer to my colleague.

8 MR. MARK: Yes, I agree. I think ultimately a  
9 reasonableness standard is -- I think we felt it was  
10 appropriate not to put specific criteria for the type of  
11 buyer or what specific criteria would satisfy the State to  
12 some degree to give Franciscan some latitude to find a  
13 partner that would be satisfactory to them, but reserving the  
14 right if there was a concern that the State ultimately had to  
15 try to work through that. We weren't envisioning the consent  
16 decree to lay out the exact criteria for which buyer could  
17 be -- to allow them to cast a fairly wide net.

18 THE COURT: First of all, I appreciate you standing.  
19 That is sort of protocol in federal court. In this instance,  
20 I am not going to require everyone to stand because we are  
21 going to be engaging in an interactive process here. Thank  
22 you for that.

23 Let me then ask, Ms. Andrade, you are satisfied with that,  
24 having no further definition, recognizing that it gives lots  
25 of latitude -- appears to give a lot of latitude to the State

1 of Washington for its approval?

2 MS. ANDRADE: Right. We did not anticipate -- or, we  
3 don't have any great concerns. We appreciate the Court's  
4 having foresight to think it might be a problem that would  
5 arise if the State were to reject a potential buyer that we  
6 procured. However, when we were drafting this, and in our  
7 discussions with the State, that wasn't a concern that came  
8 up. We are certainly planning on disclosing buyers to the  
9 State and having them vetted as appropriate. We didn't  
10 particularly see the need for a more specific criteria for a  
11 type of buyer.

12 THE COURT: If you identify the buyer under terms  
13 that you thought were good and the buyer was compatible and  
14 so forth and the AGO didn't agree, would you then seek Court  
15 approval or would you just abandon and go look for another  
16 buyer?

17 MS. ANDRADE: It would depend on whether we knew  
18 there were other buyers that were out there. If we were in  
19 the type of situation that we had secured one buyer, and  
20 thought we were unlikely to secure another, we would probably  
21 try to work with the State with their stated reasonableness  
22 standard to get them to agree with the buyer.

23 Looking at the agreement, it would be unlikely we would  
24 seek the Court's assistance. We didn't see potential for  
25 dispute over this issue.

1 THE COURT: You have satisfied the Court on that.

2 I noted there on page 8, I don't know whether I am just  
3 wordsmithing here, physician services is defined as "PCP  
4 services and orthopedic physician services." Seems to me it  
5 could be an "or" when referencing physician services, a  
6 specific one. I don't really like "and/or" anyway. If there  
7 is no concern, I am going to let that one go.

8 MS. KOSCHER: That definition is used primarily with  
9 respect to the provisions around payer contracting in which  
10 physician services payers need to be given the option to  
11 contract separately on behalf of. It would be adult PCP  
12 physicians or orthopedic physicians.

13 THE COURT: It is going to be one or the other when  
14 dealing with that. That's what my thinking was. I don't  
15 think it is going to lead to any confusion either. I will  
16 leave it up to the parties whether they want to substitute  
17 the disjunctive.

18 MR. MARK: I suppose that would be fairly easy.

19 MS. ANDRADE: We can submit that today.

20 THE COURT: The next concern is the defined phrase  
21 "share substantial financial risk." That is at paragraph 37.  
22 Then also "significant financial incentives" on page 10, the  
23 triple small i. This is another concern that I have about  
24 lack of further definition. Certainly this was an area of  
25 dispute in the -- within the litigation of when is there

1 financial risk being shared. Of course, the Court's concern  
2 is these were issues litigated and now surfaces in the  
3 agreement, and I am wondering whether some additional  
4 definition can avoid dispute or, again, if the parties are  
5 satisfied that you have an undefined term that was part of  
6 the concerns in the litigation, I can go along with that. Do  
7 you not see this is a potential issue? It never was fully  
8 defined, of course, when it went to trial and so forth.

9 MS. KOSCHER: With respect to the triple little i,  
10 and the use of "significant financial incentives," I believe  
11 our understanding of how it is used there is financial  
12 incentives speaking for physicians or physician groups,  
13 incentives that would directly impact physicians, withhold  
14 from their compensation or the funds flowing to them,  
15 certainly is how the State understands that provision.

16 MS. ANDRADE: For Franciscan, I would concur. We  
17 have had pretty extensive discussions about these terms and  
18 probably developed a level of comfort that may not be  
19 represented by the language on the page.

20 MR. MAAS: Your Honor, David Maas for The Doctors  
21 Clinic. I just want to say, I think when you look at the way  
22 the defined term in paragraph 37 is used in the consent  
23 decree, the definition is focused on other arrangements that  
24 might arise in the future with other physician groups in the  
25 area between Franciscan and other physician groups in the

1 Kitsap region. So while there may be some uncertainty  
2 lingering after this case about what substantial sharing --  
3 "sharing of substantial financial risk" means for future  
4 arrangements, I think that is inevitable, because the case  
5 didn't go through trial, that there remains some uncertainty.  
6 I think the parties are comfortable that this consent decree  
7 takes away the uncertainty for the relationships that were at  
8 issue in this case. While there may be some uncertainty on  
9 any potential future arrangement, that is not -- I don't  
10 think that changes it. There is enough certainty to resolve  
11 the dispute at issue here. Does that --

12 THE COURT: It does. Again, most of the issues I am  
13 raising here are really just for the purpose of satisfying  
14 myself that the parties ultimately are comfortable with some  
15 rather broad terms. In the long run, we all know that we use  
16 words like "substantial" and "significant," and the Ninth  
17 Circuit and other appellate courts tell this Court about how  
18 to, on a certain fact pattern, view "substantial" or the term  
19 "significant" and so forth. But, of course, that's what does  
20 lead to litigation and, again, my comments at the outset here  
21 were directed primarily to having as much confidence as we  
22 can have that this will be implemented without further  
23 disagreement, further litigation.

24 Again, if the parties are satisfied that through your  
25 discussions and negotiations, you have basic agreement,



1 understanding with one another, of what "substantial  
2 financial risk to physicians" looks like, and everybody is  
3 operating in good faith, I can certainly accept that.

4 Next comment is 48. There it begins with, "For a period  
5 commencing on the date of this consent decree." Since you  
6 have defined effective date, seems to me effective date is --  
7 doesn't leave any ambiguity as to when the date it becomes  
8 final is different from the effective date. That's just a  
9 minor issue.

10 Another minor issue is page 15 there, small paragraph (a),  
11 speaks of 15 miles. I assume that's road miles. Sometimes I  
12 have seen disputes in my private practice when we were  
13 looking at restrictive covenants whether we are talking about  
14 crow-fly miles or road miles.

15 MS. ANDRADE: You directed the plaintiff to speak  
16 first. If I may, Franciscan's understanding is as the crow  
17 flies, which is how a similar term would be used in a  
18 non-compete setting.

19 THE COURT: That's my experience. If everybody is on  
20 the same page there.

21 MS. KOSCHER: That's the State's understanding as  
22 well.

23 THE COURT: Fine. Thank you.

24 Paragraph 52 referencing Substitute House Bill 1607 says,  
25 "On the effective date." I think we know the date, and we

1 might as well plug that in there. I believe that is July  
2 28th of this year.

3 MS. ANDRADE: Your Honor, I believe it is January 1st  
4 of next year.

5 THE COURT: Is it? I thought when looking it up it  
6 was July 28th. It may be I am incorrect on that. You  
7 believe it is January 1 of 2020?

8 MS. KOSCHER: The Bill has an effective date of July  
9 of this year. In the language of this Bill, the requirements  
10 don't kick in until January 2020.

11 THE COURT: So that's what you would call the  
12 effective date or implementation date?

13 MS. KOSCHER: Right, the implementation date. We  
14 could clarify that.

15 THE COURT: Pages 21, 22, referring to the commercial  
16 payers, sharing contracting information with The Doctors  
17 Clinic or Franciscan's negotiating team, I take it that the  
18 language of "receiving" would encompass -- that is, TDC and  
19 Franciscan teams are not receiving -- not entitled to receive  
20 information. Is that your understanding?

21 MS. KOSCHER: Could you please clarify which  
22 provision you are looking at?

23 THE COURT: Paragraph 58, "The TDC physicians shall  
24 be kept separate" -- sorry. "The negotiating price and terms  
25 will be kept separate by TDC physicians." Later on, in

1 paragraph 59 there is a firewall that is established and  
2 prevents the teams here from requesting, receiving, sharing  
3 or otherwise obtaining. So I take that to mean that not only  
4 can they not be in a position of soliciting, but they just  
5 cannot in any way receive from a commercial payer.

6 It is their obligation to communicate to the commercial  
7 payer that they are not entitled to this information because  
8 a commercial payer, seems like to me, could be in a position  
9 of volunteering this information for the purpose of their  
10 negotiating. I have interpreted this correctly, have I?

11 MS. KOSCHER: Yes, that's the State's understanding,  
12 that the procedures required by the consent decree would  
13 require Franciscan and TDC to implement the firewall and  
14 other procedures that would prevent a situation where they  
15 receive information.

16 THE COURT: We can proceed where a commercial payer  
17 may want to provide this information in their negotiating,  
18 right?

19 MS. ANDRADE: Meaning the commercial payer would  
20 volunteer that information?

21 THE COURT: Conceivably, to me, they might in order  
22 to get a more favorable negotiation.

23 MS. ANDRADE: I think that is certainly conceivable.  
24 My understanding that is not typically what they would be  
25 incentivized to do in the negotiation process; is that right?

1 MR. MAAS: I think that is right. I think a  
2 commercial payer that opts to negotiate separately for these  
3 primary care and orthopedic physicians is going to be doing  
4 so with an understanding they would get -- that they feel  
5 they would get a better rate by separately negotiating,  
6 otherwise they wouldn't take up that option.

7 THE COURT: Right. I guess I am trying to  
8 anticipate, they have already negotiated with another  
9 healthcare provider in Kitsap County, and they like the very  
10 low and favorable rates they got, and they say, well, over  
11 here with ABC clinic we have these rates, and you are asking  
12 for something significantly more.

13 MR. MAAS: Just based on what we have learned in the  
14 case from the payer contracting folks involved here, that is  
15 not likely to happen. The payers are not going to share what  
16 they consider proprietary. While they may engage in  
17 negotiating tactics that may try to pit providers against one  
18 other, they aren't going to actually give one provider's  
19 contracts to another or otherwise share the most confidential  
20 piece, the rates. We don't have that concern. I appreciate  
21 the Court's concern seems to be we could be forced into a  
22 situation we receive --

23 THE COURT: Innocently in violation, I guess. If the  
24 parties who are much more familiar with the actual realities  
25 in the field are satisfied this isn't going to be a problem

1 occurring, then I am satisfied.

2 MS. KOSCHER: The State can clarify. The consent  
3 decree and our concerns are really about information sharing  
4 between Franciscan and TDC. If a payer voluntarily gave that  
5 information to one of the negotiating teams, I don't think  
6 the State would consider that a violation of the consent  
7 decree.

8 THE COURT: I see.

9 In paragraph 62 stating, "If a commercial payer does not  
10 elect to negotiate separately after being offered the option  
11 to do so, nothing in the consent decree shall prohibit  
12 Franciscan from requesting or obtaining commercial payer  
13 contracting information." So this sort of fits in with what  
14 you just indicated. It occurred to me this would sort of  
15 circumvent the best efforts or intentions of the  
16 implementation of this agreement, have I got that wrong? The  
17 commercial payers now are in a position to want to negotiate  
18 collectively; is that right?

19 MS. KOSCHER: Yes. Paragraph 62 is envisioning a  
20 situation where a commercial payer does not want to negotiate  
21 separately and wants to negotiate jointly, and there really  
22 would be no need to have a firewall or separate out that  
23 information. The payer can choose to jointly negotiate.

24 THE COURT: That might well happen, right, and the  
25 parties say that is fine? All right. Well, that was more to

1 edify the Court, I guess, that I fully understood that.

2 In paragraph -- page 24, rather, in 60 sub (b), they are  
3 speaking to non-commercial payer information. I take it that  
4 is not treated the same as commercial payer contracting  
5 information. Is that available through public disclosure  
6 laws, if we are talking about Medicaid, through state public  
7 disclosure law, and Medicare through FOIA, is that available  
8 through those statutory disclosure laws?

9 MS. ANDRADE: If I may volunteer. Medicare and  
10 Medicaid rates are published. That is certainly available  
11 without the use of FOIA. Some of the other items listed here  
12 like patient mix or service utilization is a more nuanced  
13 issue of how you obtain it and how public it is. In general,  
14 most of this information is publicly available.

15 MR. MAAS: Your Honor, I think part of this is if  
16 payers opt to negotiate separately, Franciscan may choose to,  
17 and The Doctors Clinic may choose to outsource that  
18 contracting to a vendor, a third party making the firewall  
19 process easier. Sharing cost data, for instance, for your  
20 Medicare patients across your full panel of patients is  
21 important to put the new MIPS and MACRA programs that the  
22 federal Medicare laws are requiring providers to comply with  
23 for value-based contracting.

24 This provision essentially allows the physicians to  
25 continue complying with those federal Medicare programs by

1 sharing their cost, their value-based care data across the  
2 two negotiating teams since this consent decree does not  
3 impact fixed Medicare rates, which aren't negotiated. They  
4 are set.

5 THE COURT: At page 28, just curious, in (b)(ii),  
6 identifying the Franciscan negotiating team and the TDC  
7 negotiating team, are the -- are these two entities satisfied  
8 that they will have no problem keeping a team, providing a  
9 team?

10 MS. ANDRADE: Yes, Your Honor. Ms. Williams has  
11 already started that work. It will be an undertaking, but we  
12 don't anticipate having any issue complying.

13 THE COURT: Page 29, we have some more good lawyer  
14 language that sometimes leads to litigation. There I am  
15 referring to, in the second full sentence, "The Court may  
16 grant extension upon motion for good cause shown." Then the  
17 next sentence, "Franciscan agrees to use its best efforts to  
18 divest the divestiture assets as expeditiously as possible."

19 This may be just in line with our earlier conversation  
20 about use of "substantial" or "significant." May I ask, is  
21 this an area that you have talked in some detail about what  
22 you believe would constitute compliance and best efforts? I  
23 think of the words "best efforts," Howard Schultz and the  
24 sale of the Sonics used "best efforts" language, which led to  
25 a lot of litigation which never resulted, as the parties

1 might know, in an order. Judge Pechman, I think, was  
2 prepared to issue an order interpreting that phrase. A lot  
3 of money was spent discussing whether or not the new owner,  
4 Bennett, had actually used best efforts to keep the Sonics in  
5 Seattle.

6 So if the parties -- you might be encouraged to -- I don't  
7 know that it has to be in the agreement. This is where good  
8 faith is so important in the implementation. I call out  
9 these terms indicating that they are a potential for future  
10 litigation.

11 Did you have enough discussion where you have -- you are  
12 comfortable with the language that is subject to lawyers  
13 disagreeing?

14 MR. MARK: Yes, Your Honor. I appreciate those  
15 concerns. I think they are valid. Ultimately, I think the  
16 parties are relying on good faith representations. It  
17 certainly is not out of the ordinary in an antitrust matter  
18 for the parties to be asked to divest assets. I think -- and  
19 the -- our office has experience working with parties to see  
20 those through and sort of facilitate that. We understand  
21 that sometimes there are bumps in the road. We have seen a  
22 fair amount -- have experience with this. I think, based on  
23 that experience, we are comfortable that this is a process  
24 that the parties have agreed to in good faith and can be  
25 effectuated.



1           THE COURT: This Court is required to interpret "good  
2   cause" all the time. Frankly, seems like to me, in my  
3   experience, at least this Court, and I don't think I am  
4   different from many, the threshold is kind of low for what  
5   amounts to good cause. If somebody has any reasonable  
6   explanation for not fulfilling a particular deadline or  
7   something, then --

8           MS. ANDRADE: Your Honor, if it would comfort the  
9   Court at all, Franciscan has already started working on this  
10   particular process, even in advance of the entry of this  
11   decree. I don't think we are in a Sonics situation, if that  
12   helps at all.

13          THE COURT: All right. I am satisfied.

14          In paragraph 70, same page here as page 29 at the bottom,  
15   the last sentence reads, "To the extent such reports contain  
16   information that Franciscan deems confidential, such reports  
17   shall not be filed in the public docket of the court." Of  
18   course, my question would be: How is the Court -- if a  
19   dispute arises, how is the Court to consider a dispute with  
20   information not on the docket? Seems to me one would file  
21   under seal, a motion to seal, rather than say that it is just  
22   not going to be filed in a public docket. Maybe "public  
23   docket" implicates or implies under seal.

24          MS. ANDRADE: We could issue or file an errata  
25   indicating we would follow the preexisting procedures the

1 Court has entered in terms of marking things confidential, if  
2 that would help clarify.

3 MS. KOSCHER: I believe the State's understanding of  
4 that provision is it would be filed under seal in the same  
5 way that confidential information was filed under seal in the  
6 matter previously.

7 THE COURT: Again, you can certainly read that into  
8 it. If that is the way the parties read it, the record is  
9 made here, the "public docket" simply means that it is  
10 expected to be on the docket but under seal.

11 Later on, on the next page, still on paragraph 70,  
12 second-to-last sentence begins, "To the extent necessary, the  
13 parties agree to reserve for argument before the Court the  
14 extent of the trustee's authority." It would seem to me you  
15 would put "the need for a trustee" or "the extent of the  
16 trustee's authority." Wouldn't the first question, the  
17 threshold question, be whether there is a need for a trustee?

18 MS. ANDRADE: We currently do not anticipate the need  
19 for a trustee.

20 MS. KOSCHER: Yeah, as the State understands how the  
21 consent decree is written, there would not be appointment of  
22 a trustee unless Franciscan was unable to divest the ASC,  
23 file the report as laid out in the consent decree, then at  
24 that time the Attorney General could seek the appointment of  
25 a trustee.

1 THE COURT: I would anticipate that perhaps there  
2 would be a disagreement as to whether there is actually a  
3 need for a trustee that has been triggered. That's why I am  
4 suggesting language that says, "The parties agree to reserve  
5 for argument before the Court either the need for a trustee  
6 or the extent of a trustee's authority."

7 MS. ANDRADE: Our understanding of the language is if  
8 the AG developed the opinion a trustee was needed, they would  
9 move to do so.

10 MS. KOSCHER: That's our understanding as well.

11 THE COURT: That is another opportunity for the  
12 transcript to resolve any potential disagreement there. The  
13 parties seem to be operating under the same understanding.

14 Paragraph 74 is the paragraph that makes reference to  
15 "notice," and do the parties have an understanding what  
16 notice -- how notice is defined?

17 MS. KOSCHER: Yes. Franciscan has already been  
18 working with the State in getting -- developing what the  
19 notice will be when it is provided, and assuming the State's  
20 approval --

21 THE COURT: What the nature of the notice is, the  
22 format and so forth?

23 MS. KOSCHER: Yes.

24 THE COURT: All right. Paragraph 78, is there a *cy*  
25 *pres* fund currently in existence? Are you going to create

1 one? Does there need to be criteria, or is everybody  
2 satisfied that just broad reference to *cy pres* is sufficient  
3 here?

4 MR. MARK: I think the reference to *cy pres* is  
5 sufficient. We are not in possession of the funds yet. When  
6 we are, I mean we would hold those essentially as trustee and  
7 award the funds to the grant recipients. There are internal  
8 processes for the office to do that.

9 THE COURT: It may be that Franciscan doesn't really  
10 care. I think it probably might, since they are in the  
11 healthcare community.

12 MS. ANDRADE: To the extent this is a term, we  
13 certainly agreed to the amount and that a *cy pres* will be  
14 created. We sort of left the distribution and creation of  
15 the account up to the AG, considering it was in their  
16 wheelhouse and not ours.

17 THE COURT: Okay.

18 Paragraph 81, I guess I see this -- maybe it is more of  
19 the lawyer in me than the judge, but it leaves -- seems to me  
20 it leaves the Attorney General's Office really in control of  
21 this because the Attorney General advises the Department of  
22 Health on its certificate of need process, and whether one is  
23 needed or not needed. Seems like to me that if you wanted  
24 another half-million dollars, you can maybe affect the result  
25 there. I realize we are talking about the structure of the

1 Attorney General's Office, and you have separate legal  
2 counsel and so forth. It just struck me that if you really  
3 wanted the money, you can steer it in that direction.

4 MR. MARK: Appreciate that. Certainly, the ultimate  
5 decision on whether the certificate of need would be required  
6 is solely up to the Department of Health. While there are  
7 attorneys at the office who advise the program, that is  
8 separate and apart from whether or not the certificate of  
9 need would be required or not. There is staff at the  
10 Department of Health and a process for them to make that  
11 determination. There really is -- it is completely separate  
12 from the office's role in advising them on legal issues.

13 THE COURT: I wouldn't expect you to give any other  
14 answer other than the department makes the decisions, not the  
15 lawyers. Again, if defendants, they go under this seeing  
16 that, and it is not important.

17 MS. ANDRADE: Our understanding matches Mr. Mark's  
18 explanation of the AG's role. We are comfortable with the  
19 language.

20 THE COURT: In paragraph 87 it provides the language,  
21 "Nothing in the decree precludes pursuing other available  
22 remedies against the defendant." Would that include claims  
23 or remedies? Aren't we really talking about pursuing claims  
24 for which there may be remedies?

25 MR. MARK: I think that is probably accurate,

1 Your Honor. We could submit an errata clarification for  
2 that, too.

3 MS. ANDRADE: We would be comfortable with that,  
4 Your Honor.

5 THE COURT: Paragraph 95 is fine the way it is. It  
6 is just that "the exceptions of litigation and other legal  
7 proceedings or as otherwise required by law," you probably  
8 researched this and had determined that that is not -- the  
9 "otherwise required by law" is not so large as to swallow the  
10 entire preclusion, getting back to or considering the  
11 application of the public disclosure law.

12 MS. KOSCHER: I think that is right. There is one  
13 section in the consent decree that specifically exempts  
14 notice of future affiliations from -- if Franciscan were to,  
15 or TDC were to submit those to the AGs from disclosure under  
16 the public records. Otherwise, the Public Records Act would  
17 apply to any information obtained through there.

18 MS. ANDRADE: We are comfortable with that language.

19 THE COURT: That's what is important. That concludes  
20 the Court's comments or questions, unless you have any  
21 questions. I want to give you an opportunity.

22 MS. ANDRADE: None from Franciscan.

23 THE COURT: All right. The Court will sign this  
24 consent order. Looks like to me there is only going to be a  
25 couple changes here, nothing of any real significance.

1 Again, congratulations to the parties for working this out in  
2 a way that is going to have the best chance for providing  
3 quality healthcare in Kitsap County.

4 We are at recess.

5 (Recessed.)  
6  
7

8 C E R T I F I C A T E  
9  
10

11 I certify that the foregoing is a correct transcript from  
12 the record of proceedings in the above-entitled matter.  
13  
14  
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16 /s/ *Angela Nicolavo*

17 ANGELA NICOLAVO  
18 COURT REPORTER  
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